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Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions

Addendum

Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its twelfth session

I. Introduction

1. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was established by the General Assembly in its resolution 53/111 of 9 December 1998.

2. In its resolution 55/25 of 15 November 2000, the General Assembly requested the Ad Hoc Committee to continue its work on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, in accordance with resolutions 53/111 and 53/114 of 9 December 1998 and 54/126 of 17 December 1999, and to finalize such work as soon as possible.

3. The present report is submitted to the General Assembly at its fifty-fifth session pursuant to resolutions 54/126 and 55/25 to apprise the Assembly of the work of the Ad Hoc Committee in implementing its mandate and to submit its recommendations to the Assembly for consideration and action.

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II. Proceedings of the Ad Hoc Committee

4. The Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime held its twelfth session in Vienna from 26 February to 2 March 2001, during which it held 10 meetings.

5. The twelfth session of the Ad Hoc Committee was attended by representatives of 118 States. Also attending the twelfth session were observers for organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

6. At its tenth session, held in Vienna from 17 to 28 July 2000, the Ad Hoc Committee had approved the draft United Nations Convention against Transnational Organized Crime (A/AC.254/36) for submission to the General Assembly at its fifty-fifth session for consideration and action in accordance with Assembly resolution 54/126. At its eleventh session, held in Vienna from 2 to 28 October 2000, the Ad Hoc Committee had approved the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the draft Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, for submission to the General Assembly at its fifty-fifth session for consideration and action in accordance with resolution 54/126. On the recommendation of the Ad Hoc Committee at its tenth and eleventh sessions, the Assembly had adopted resolution 55/25, by which it had adopted the United Nations Convention against Transnational Organized Crime and the above-mentioned protocols and opened them for signature at the High-level Political Signing Conference to be held in Palermo from 12 to 15 December 2000 in accordance with resolution 54/129 of 17 December 1999.

7. Also at its eleventh session, the Ad Hoc Committee had considered all the articles of the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. In an effort to achieve consensus that would permit the finalization and approval of the draft Protocol, the Ad Hoc Committee had extended its eleventh session by holding an additional meeting on 28 October. In spite of the fact that it had come very close to achieving the necessary consensus, it had been unable to complete its work in relation to the draft Protocol. Consequently, the Ad Hoc Committee had decided to include in the draft resolution that it was submitting to the General Assembly at its fifty-fifth session for consideration and action (adopted subsequently by the Assembly as resolution 55/25) two paragraphs in which the Assembly would note that the Ad Hoc Committee had not completed its work on the draft Protocol and would request it to finalize such work as soon as possible.

8. At the ninth session of the Ad Hoc Committee, the Chairman had requested all regional groups to appoint representatives to form a group that would be asked, at the tenth session of the Ad Hoc Committee, to ensure the consistency of the text in all the official languages of the United Nations. The consistency group had continued its work at the eleventh session of the Ad Hoc Committee.

9. At the opening of the twelfth session, statements were made by the representatives of China, Sweden, on behalf of the States Members of the United Nations that are members of the European Union, Egypt, Japan, the Russian Federation, the Islamic Republic of Iran, Pakistan, Canada, the Syrian Arab Republic, Mexico, the United States of America, Ecuador, Colombia, Trinidad and Tobago, India, Cuba, Jordan, Nigeria, the Republic of Korea and Saudi Arabia.

10. At the twelfth session, the Secretary recalled that the composition of the consistency group was the following: the representatives of Cameroon, Egypt, Morocco, Nigeria and South Africa, appointed by the Group of African States; the representatives of China, India, Japan and Jordan (replaced by the representative of Oman at the eleventh session of the Ad Hoc Committee), appointed by the Group of Asian and Pacific States; the representatives of the Russian Federation and Slovakia, appointed by the Group of Eastern European States; the representatives of Colombia, Cuba, Guatemala and Mexico, appointed by the Group of Latin American and Caribbean States; and the representatives of France, Italy, Spain and the United States of America, appointed by the Group of Western European and Other States. The Secretary also informed the Ad Hoc Committee that the consistency group would continue to be assisted in its work by an editor, by translators from the translation section for each official language and by a member of the secretariat of the Ad Hoc Committee.

11. The Chairman asked the consistency group to review the concordance between the draft Protocol and the United Nations Convention against Transnational Organized Crime, in addition to ensuring the consistency of the text of the draft Protocol in all official languages of the United Nations. The Chairman requested the representative of Mexico to continue to act as coordinator of the consistency group.

12. The Chairman stated that the twelfth session of the Ad Hoc Committee was the last opportunity for action on the draft Protocol. He asked the Ad Hoc Committee to confirm the understanding that it would focus its efforts on the issues that remained open and try to forge agreement on those matters, without reopening the discussion of provisions on which it had reached agreement at its eleventh session. The issues remaining unresolved were the preamble and articles 0, 2, 4 and 9. The Ad Hoc Committee confirmed that understanding.

13. At its twelfth session, the Ad Hoc Committee considered all outstanding provisions of the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. It based its work on a revised text of the draft Protocol (A/AC.254/4/Add.2/Rev.6) and on proposals and contributions submitted by Governments and by the European Commission. The Ad Hoc Committee also had before it amendments to previous proposals made by the Chairman.

14. The representative of Sweden, speaking on behalf of the States members of the European Union that are Members of the United Nations, informed the Ad Hoc Committee that the European Commission had been mandated by the Council of the European Union to negotiate article 9 (Marking of firearms) of the draft Protocol on behalf of all 15 States members of the European Community. The Chairman stated that the Ad Hoc Committee would take note of that statement on the understanding that the mandate would not affect the observer status of the European Commission.

15. The representatives of Chile and Mexico requested that the report of the Ad Hoc Committee indicate that their Governments had not participated in the decision of the Ad Hoc Committee on article 4, paragraph 2, of the draft Protocol, but had not stood in the way of consensus.

16. The representative of Colombia requested that the report of the Ad Hoc Committee reflect his Government's position on article 4, paragraph 2, of the draft Protocol, namely, that it considered itself not to be bound by the decision of the Ad Hoc Committee on that provision.

17. The representative of Argentina reserved his Government's position on including in the preamble of the draft Protocol a reference to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). The inclusion of that reference entailed a partial redefinition of the scope and extent of the principle of self-determination of peoples, which had been the subject of other resolutions of the General Assembly, such as resolution 1514 (XV) of 14 December 1960. Furthermore, he was of the view that it was not appropriate to include such a reference in an international instrument whose principal objective was to fight the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. He stated that the Government of Argentina reserved its right to reiterate its position when the matter was considered by the General Assembly or at the time of signature or ratification of the Protocol.

18. The representative of Egypt requested that the report of the Ad Hoc Committee indicate that, in the interest of not obstructing consensus on the draft Protocol, he had expressed his Government's reservation with regard to the entire Protocol in its current form, as it did not sufficiently reflect many of the views expressed during the negotiations.

19. The representatives of Benin and Nigeria requested that the report of the Ad Hoc Committee indicate their respective Government's opinion that the preamble of the draft Protocol should have taken into account the destabilizing effects closely linked to other transnational criminal activities for communities and cities, and in interstate conflicts. They also expressed their reservations on article 4, paragraph 2, of the draft Protocol, because of the exclusion of state-to-state transactions and state transfers, and on article 8, because of its vagueness regarding the marking of firearms.

20. The representative of the United Kingdom of Great Britain and Northern Ireland reserved his Government's position on the draft resolution until its consideration by the General Assembly, but indicated that he would not obstruct consensus.

21. The representative of Ukraine requested that the report of the Ad Hoc Committee reflect his view that the *travaux préparatoires* should indicate that the words "state-to-state transactions" and "state transfers" were included in article 4, paragraph 2, on the understanding that they included state-to-state transactions involving firearms and state transfers of firearms effected on the basis of relevant agreements concluded between the Governments of the States concerned or on behalf of those Governments by virtue of powers conferred by them.

22. The representative of Turkey requested that the report of the Ad Hoc Committee include the statement that he had made before the approval of the draft Protocol. The illicit manufacturing of and trafficking in firearms, their parts and components and ammunition had always been of serious concern to his Government, on geographical and other grounds. That was why his Government had been insisting throughout the negotiation process on a wider scope, a more comprehensive definition of firearms and an effective marking system not only for firearms, but also for their parts and components and ammunition. His Government had made several proposals to improve the text but it had not been possible to achieve consensus on including parts and components of firearms within the marking system. With regard to destructive devices, his Government regretted that, at the twelfth session of the Ad Hoc Committee, at which it had been expected to find compromise solutions to all pending issues, no substantive discussion had taken place in order to arrive at an adequate definition. His Government would continue to contribute to all efforts aimed at establishing an effective regime against the illicit manufacturing of and illegal trading in destructive devices, firearms, their parts and components and ammunition, in all relevant international and regional forums.

23. The representative of Azerbaijan requested that the report of the Ad Hoc Committee indicate that his Government had reserved its right to make reservations regarding article 4, paragraph 2, and article 8, paragraphs 1 (b) and (c), of the draft Protocol.

24. The representative of the Syrian Arab Republic requested that the report of the Ad Hoc Committee reflect his Government's reservations regarding the preamble and articles 4 and 8 of the draft Protocol.

25. The representative of the Libyan Arab Jamahiriya requested that the report of the Ad Hoc Committee reflect his Government's reservations regarding article 8 of the draft Protocol and the retention of article 4, paragraph 2.

26. The representative of Haiti requested that the report of the Ad Hoc Committee reflect her Government's preference for a formulation of article 8 of the draft Protocol that would require on each firearm marking that would provide the country and place of manufacture, the name of the manufacturer and the serial number.

27. The representative of the United States of America requested that the report of the Ad Hoc Committee indicate that her Government reserved its position on the inclusion of certain language in the draft resolution by which the General Assembly would adopt the Protocol, and on article 8, paragraph 1, of the draft Protocol, but would not block the submission of the draft resolution and the draft Protocol to the General Assembly. In particular the United States objected to the inclusion in the draft resolution of a preambular paragraph reaffirming, inter alia, the right of self-determination of peoples, in particular peoples under colonial or other forms of alien domination or foreign occupation. The United States considered that it was inappropriate for the Ad Hoc Committee to highlight the right of self-determination of any one group of people, in particular in a draft resolution by which the General Assembly would adopt a law enforcement instrument. To the extent that such language had appeared in General Assembly resolutions in the past, it had been accompanied by a number of paragraphs that together presented a far more balanced and objective characterization of the right of self-determination. With regard to article 8 of the draft Protocol, the United States believed that a number of useful

proposals that would have clarified the text of paragraph 1 (a) of that article had not been given adequate consideration by the Ad Hoc Committee. At a minimum, the United States believed that the *travaux préparatoires* should reflect the common understanding that the provision of article 8, paragraph 1 (a), that reads "maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code" was intended to apply only to those countries which were currently using a marking system that included symbols as part of its unique identifier and, further, that such countries would, in most cases, mark the firearm with the name of the country of manufacture and a simple geometric symbol in combination with a serial number.

28. The observer for the European Commission requested that the report of the Ad Hoc Committee reflect his statement on behalf of the European Community on article 8 of the draft Protocol. The observer had requested the inclusion of the word "system" before the words "with simple geometric symbols" in article 8, paragraph 1 (a), of the draft Protocol. The observer had proposed that amendment in order to clarify the text and the addition had no effect on the meaning of the phrase. The observer had also requested the addition of the words "and of the individual firearm" at the end of paragraph 1 (a) of article 8 in order to avoid an erroneous interpretation of that paragraph. According to the observer, the unique marking of firearms was aimed at identifying in a unique way each firearm, while at the same time permitting the ready identification of the country of manufacture, and should not be understood as being aimed only at the ready identification of the country of manufacture.

29. The representative of China requested that the report of the Ad Hoc Committee indicate his Government's reservation on article 4 of the draft Protocol, namely, that the Protocol should not apply to state-to-state transactions.

30. The representative of India requested that the report of the Ad Hoc Committee reflect his Government's position on article 4, paragraph 2. In the view of the representative, the exclusions foreseen in that paragraph would be viewed only in narrow, precisely defined terms. His Government would enter a reservation to that effect at the time of signature of the Protocol.

31. During the twelfth session of the Ad Hoc Committee, the consistency group reviewed the text of the draft Protocol. In addition, at the request of the Chairman, the consistency group reviewed the concordance of the draft Protocol with the United Nations Convention against Transnational Organized Crime and the protocols thereto, as adopted by the General Assembly in its resolution 5/25. The recommendations of the consistency group were incorporated into the final text of the draft Protocol.

32. At its 239th meeting, on 2 March, the Ad Hoc Committee approved the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and decided to submit it to the General Assembly for consideration and action at its fifty-fifth session, in accordance with resolutions 54/126 and 55/25. At the same meeting, the Ad Hoc Committee approved a draft resolution for submission to the Assembly at its fifty-fifth session for consideration and action. Finally, at the same meeting, the Ad Hoc Committee

adopted the report on its twelfth session. Thus, the Ad Hoc Committee completed its work in accordance with resolutions 53/111, 53/114 and 54/126.

III. Matters calling for action by the General Assembly at its fifty-fifth session

33. The Ad Hoc Committee recommends to the General Assembly the adoption of the following draft resolution and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime:

Draft resolution

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 55/25 of 15 November 2000, by which it adopted the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,

Reaffirming the inherent right to individual or collective self-defence recognized in Article 51 of the Charter of the United Nations, which implies that States also have the right to acquire arms with which to defend themselves, as well as the right of self-determination of all peoples, in particular peoples under colonial or other forms of alien domination or foreign occupation, and the importance of the effective realization of that right,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its twelfth session,[1] and commends the Ad Hoc Committee for its work;

2. *Adopts* the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, annexed to the present resolution, and opens it for signature at United Nations Headquarters in New York;

3. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto.

Annex

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Aware of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

Convinced, therefore, of the necessity for all States to take all appropriate measures to this end, including international cooperation and other measures at the regional and global levels,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

Bearing in mind the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

[1] A/55/383/Add.2.

[2] Resolution 2625 (XXV), annex.

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition will be useful in preventing and combating those crimes,

Have agreed as follows:

I. General provisions

Article 1
Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2
Statement of purpose

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Article 3
Use of terms

For the purposes of this Protocol:

(a) "Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

(b) "Parts and components" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

(c) "Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(d) "Illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

(i) From parts and components illicitly trafficked;

(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol;

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;

(e) "Illicit trafficking": the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol;

(f) "Tracing" shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

Article 4
Scope of application

1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:

(a) Illicit manufacturing of firearms, their parts and components and ammunition;

(b) Illicit trafficking in firearms, their parts and components and ammunition;

(c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:

(a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.

Article 6
Confiscation, seizure and disposal

1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked.

2. States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded.

II. Prevention

Article 7
Record-keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(a) The appropriate markings required by article 8 of this Protocol;

(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 8
Marking of firearms

1. For the purpose of identifying and tracing firearms, States Parties shall:

(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or

alphanumeric code, permitting ready identification by all States of the country of manufacture;

(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

Article 9
Deactivation of firearms

A State Party that does not recognize a deactivated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the following general principles of deactivation:

(a) All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

(b) Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

(c) Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

Article 10
General requirements for export, import and transit licensing or authorization systems

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Article 11
Security and preventive measures

In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

(a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

(b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation.

Article 12
Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

(d) Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article 13
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.

Article 14
Training and technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the

training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.

Article 15
Brokers and brokering

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

(a) Requiring registration of brokers operating within their territory;

(b) Requiring licensing or authorization of brokering; or

(c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

III. Final provisions

Article 16
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature at United Nations Headquarters in New York from the thirtieth day after its adoption by the General Assembly until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 18

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 19

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States

Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 20
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 21
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

United Nations A/55/383/Add.3

General Assembly

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Fifty-fifth session
Agenda item 105
Crime prevention and criminal justice

Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions

Addendum

Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its twelfth session

Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

I. Introduction

1. The present document contains interpretative notes that were discussed by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime throughout the process of negotiation of the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. These notes will be included in the official records of the negotiation process, which the Secretariat will prepare in accordance with standard practice. The Ad Hoc Committee was informed by the Secretariat in document A/AC.254/33 of the nature of the official records of the negotiation and of the practice regarding their drafting and compilation. The present document is submitted to the General Assembly for information purposes only. The Ad Hoc

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Committee took no formal action on these notes and none is expected of the Assembly at its fifty-fifth session.

II. Interpretative notes

Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Article 1: Relation with the United Nations Convention against Transnational Organized Crime

Paragraph 2

2. The *travaux préparatoires* should indicate that this paragraph was adopted on the understanding that the words "mutatis mutandis" meant "with such modifications as circumstances require" or "with the necessary modifications". Provisions of the Convention that are applied to the Protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention.

Article 3: Use of terms

Subparagraph (a)

3. The *travaux préparatoires* should indicate that the word "portable" in subparagraph (a) was included on the understanding that the intended meaning was to limit the definition of "firearm" to firearms that could be moved or carried by one person without mechanical or other assistance.

Article 4: Scope of application

Paragraph 2

4. The *travaux préparatoires* should indicate that the words "state-to-state transactions" refer only to transactions by States in a sovereign capacity.

Article 5: Criminalization

Paragraph 2

5. The *travaux préparatoires* should indicate that the "other measures" mentioned here are additional to legislative measures and presuppose the existence of a law.

6. The *travaux préparatoires* should indicate that references to attempting to commit the offences established under domestic law in accordance with this paragraph are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also culpable or punishable under domestic law.

Article 13: Cooperation

Paragraph 2

7. The *travaux préparatoires* should indicate that the reference to "matters relating to this Protocol" in this paragraph was included in order to take into account the fact that, for matters relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, some States Parties might find it necessary to establish different authorities than those responsible for dealing with mutual legal assistance matters under article 18 of the Convention.

Article 17: Signature, ratification, acceptance, approval and accession

8. The *travaux préparatoires* should indicate that, while the Protocol has no specific provisions on reservations, it is understood that the Vienna Convention on the Law of Treaties of 1969 applies regarding reservations.